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# Appeal Decision

by **Ken McEntee**

a person appointed by the Secretary of State for Communities and Local Government

Decision 5 December 2017

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**Appeal ref: APP/X4725/L/17/1200123**

- The appeal is made under section 218 of the Planning Act 2008 and Regulation 117(1)(a) of the Community Infrastructure Levy Regulations 2010 (as amended).
- The appeal is brought by [REDACTED].
- A Liability Notice was issued by Wakefield Council on 26 May 2017.
- A Demand Notice was issued on 13 June 2017.
- The relevant planning permission to which the CIL surcharge relates is [REDACTED].
- The description of the development is: [REDACTED].
- Planning permission was granted on 25 May 2017.
- The alleged breach is the failure to submit a Commencement Notice.
- The outstanding surcharge for failure to submit a Commencement Notice is [REDACTED].

**Summary of decision: The appeal is dismissed and the surcharge of [REDACTED] is upheld.**

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## Reasons for the decision

1. An appeal under Regulation 117(1)(a) states that the claimed breach which led to the imposition of the surcharge did not occur. Regulation 67(1) explains that a Commencement Notice (CN) must be submitted to the Council (Collecting Authority) no later than the day before the day on which the chargeable development is to be commenced. In this case, the appellant insists that she sent a CN by e-mail on 30 May 2017. However, the Council contend they have conducted IT searches and have found no record of any such e-mail attaching a CN, and have provided a screen shot of the search results. They point out that the software they use to carry out the search also detects e-mails that may have been deleted. I consider it noteworthy that the appellant has not taken the opportunity to respond to the Council's assertions.
2. On the evidence before me, and on the balance of probabilities, I cannot be satisfied a CN was sent to the Council. In any event, I note the CN that has been submitted with the appeal is dated 30 May 2017 and states a commencement date of the same day. That being the case, even if it could be demonstrated that this notice was submitted by e-mail on 30 May 2017, as claimed by the appellant, it would not have been submitted at least one day before commencement as

required by Regulation 67(1). In these circumstances, the appeal on the ground made fails accordingly.

3. Although ground 117(1)(c) has not been appealed, the appellant questions the amount of surcharge as unreasonable. For the avoidance of doubt, Regulation 83 explains that where a chargeable development is commenced before the collecting authority has received a valid CN the Collecting Authority may impose a surcharge equal to 20 per cent of the chargeable amount payable or £2,500, whichever is the lower amount. [REDACTED]  
[REDACTED] I am satisfied the surcharge has been calculated correctly.

### **Formal decision**

4. For the reasons given above, I hereby dismiss the appeal and uphold the CIL surcharge.

*K McEntee*